

REMARKS

This is intended as a full and complete response to the Final Office Action dated February 19, 2008, having a shortened statutory period for response set to expire on May 19, 2008. Applicants submit this response to place the application in condition for allowance or in better form for appeal. Please reconsider the claims pending in the application for reasons discussed below.

Claims 28-51 are pending in the application. Claims 28-51 remain pending following entry of this response. Claim 28 has been amended. Applicants submit that the amendments do not introduce new matter.

Claim Rejections - 35 U.S.C. § 112

Claim 28 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 28 been amended. Applicants submit that this claim, as amended, addresses this rejection. Therefore, Applicants respectfully request the withdrawal of the rejection.

Claim Rejections - 35 U.S.C. § 102

Claims 28-51 are rejected under 35 U.S.C. 102(e) as being anticipated by *Circenis* (U.S. Patent No. 7,146,496).

Applicants respectfully traverse this rejection.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9

USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

In this case, *Circenis* does not disclose “each and every element as set forth in the claim.” For example, regarding claim 28, *Circenis* does not disclose, recording a compliant state of the computerized apparatus, with respect to the on-demand resource, in which a system function uses the on-demand resource with authorization, and determining an noncompliant state of the computerized apparatus, with respect to the on-demand resource, in which the system function uses the on-demand resource without authorization. Claims 36 and 44 recite similar claim limitations.

Circenis discloses two types of components. The first type of components is considered to be allowable under an acquired right, or in other words, components that “a user has already paid for and/or is entitled to use as a matter of right.” See *Circenis*, Col. 5, Lines 61-64. The second type of components is the ICOD (Instant Capacity on Demand) components, which “are components that the user has not paid for and/or is not entitled to use as a matter of right.” See *Circenis*, Col. 5, Lines 64-66. These components can be activated temporarily if the user obtains some temporary right, such as by maintaining a temporary capacity balance. See *Circenis*, Col. 5, Lines 66-67 – Col. 6, Lines 1-3.

In this case, “a user interacts with software in the computer system, e.g., [an] ICOD software agent in the ICOD computer system, to request the activation of a set of previously inactive components.” See *Circenis*, Col. 9, Lines 49-52. Subsequently, “the software . . . ascertains whether the number of active components that results from the activation request would exceed the number of active components allowable under the acquired right.” See *Circenis*, Col. 9, Lines 57-60. If it is determined that “the activation of the set of previously inactive components would not bring the computer system out of compliance under the acquired right, there is no need to employ temporary capacity[,] and activation is allowed. See *Circenis*, Col. 9, Line 67 – Col. 10, Lines 1-3.

On the other hand, if it is determined that “the number of inactive components that would result from the activation request is less than the number of inactive components expected to be present and inactive in the computer system to comply with the acquired right, a further check is made . . . to ascertain whether there is adequate temporary capacity available to support the activation request.” See *Circenis*, Col. 10, Lines 5-11. If enough temporary capacity is available “to support the activation of the components in the activation request[,] the temporary capacity balance is adjusted accordingly.” See *Circenis*, Col. 10, Lines 51-55. That is, a “temporary capacity consumption rate is calculated, and the temporary capacity is account is debited.” See *Circenis*, Col. 6, Lines 43-45.

Once “the temporary capacity balance drops below a certain threshold, the ICOD software agent may request that the user purchase additional temporary capacity or that the user acquire additional components under an acquired right basis.” See *Circenis*, Col. 7, Lines 3-7. Furthermore, “the ICOD software agent may reconfigure the ICOD system so that the ICOD components are deactivated immediately[,]” or deactivate the components upon reboot. See *Circenis*, Col. 7, Lines 7-12. Therefore, the temporary capacity balance simply represents the amount of time available to use an ICOD component.

It is also important to note that the compliance of the system disclosed in *Circenis* is determinative of whether or not additional components are being used other than those under the acquired right. That is, a system is found to be compliant if only those components under the acquired right are utilized, and is found to be non-compliant if additional components not allowable under the acquired right (*i.e.*, the ICOD (Instant Capacity on Demand) components) are utilized. Support for this can be found in the following portions of *Circenis*:

To ensure compliance, vendors in the past employ an ICOD software agent, e.g., codes in the ICOD system, to periodically take inventory of the inactive (or active) components and compare the number of inactive (or active) components[.]. If a user's computer system uses more active components therein than the number of active components allowed under license [or the acquired right], the users'

system is deemed to be in a non-compliant state. See *Circenis*, Col. 1, Lines 43-64.

. . .

If the number of active CPU's [or components] exceeds the number of CPU's allowable under the acquired right, ICOD software agent will note that the system is out of compliance in accordance with the acquired right and beings to debit temporary capacity balance if there is temporary capacity available. See *Circenis*, Col. 7, Lines 37-43.

In contrast, the present claims recite that a computerized apparatus is in a compliant state if a system function uses the on-demand resource with authorization, and is in a non-compliant state if the system function uses the on-demand resources without authorization. Therefore, the compliance of the system is dependent on whether or not the on-demand resources are being utilized with or without authorization, whereas *Circenis* discloses that the compliance of the system is dependent on whether or not the on-demand resources are being used (regardless of whether the on-demand resources are being used with or without authorization). As a result, *Circenis* does not disclose recording a compliant state of the computerized apparatus, with respect to the on-demand resource, in which a system function uses the on-demand resource with authorization, and determining an in compliant state of the computerized apparatus, with respect to the on-demand resource, in which the system function uses the on-demand resource without authorization.

Furthermore, *Circenis* fails to disclose initiating a grace period during which the system function continues to use the on-demand resource while in the in compliant state, wherein the computerized apparatus transitions from the compliance state to the in compliant state and then initiates the grace period in a manner providing continuous availability of the on-demand resource to the system function, as further disclosed in claims 28, 36, and 44. The Examiner states that this element is disclosed in Col. 6 lines 66 – Col. 6, line 3 of *Circenis*.

However, this cited portion is simply directed towards the temporary capacity balance used to access ICOD components. As stated earlier, the temporary capacity

balance simply indicates the amount of time available for accessing an ICOD component. Furthermore, as stated above, the on-demand resources (ICOD components) are only utilized in a non-compliant state, whereas the present claims disclose that the on-demand resources can be used in a compliant state and a non-compliant state. Therefore, *Circenis* does not and can not disclose a grace period during which a system function continues to use the on-demand resource while in the in-compliant state, wherein the computerized apparatus transitions from the compliance state to the in-compliant state and then initiates the grace period in a manner provided continuous availability of the on-demand resource to the system function.

Therefore, the withdrawal of the rejection to claims 38, 36, 44 and the claims that depend therefrom is respectfully requested.

Therefore, the claims are believed to be allowable, and allowance of the claims is respectfully requested.

Conclusion

Having addressed all issues set out in the office action, Applicants respectfully submit that the claims are in condition for allowance and respectfully request that the claims be allowed.

If the Examiner believes any issues remain that prevent this application from going to issue, the Examiner is strongly encouraged to contact Gero McClellan, attorney of record, at (336) 643-3065, to discuss strategies for moving prosecution forward toward allowance.

Respectfully submitted, and
S-signed pursuant to 37 CFR 1.4,

/Gero G. McClellan, Reg. No. 44,227/

Gero G. McClellan
Registration No. 44,227
PATTERSON & SHERIDAN, L.L.P.
3040 Post Oak Blvd. Suite 1500
Houston, TX 77056
Telephone: (713) 623-4844
Facsimile: (713) 623-4846
Attorney for Applicants